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(3) State that, upon receipt of a response to the RFI, the CO will review the *H–2B Registration* as well as any supplemental information and documentation and issue a Notice of Decision on the *H–2B Registration*. The CO may, at his or her discretion, issue one or more additional RFIs before issuing a Notice of Decision on the *H–2B Registration;* and

(4) State that failure to comply with an RFI, including not responding in a timely manner or not providing all required documentation within the specified timeframe, will result in a denial of the *H–2B Registration*.

(h) *Notice of Decision*. The CO will notify the employer in writing of the final decision on the *H–2B Registration*.

(1) Approved *H–2B Registration*. If the *H–2B Registration* is approved, the CO will send a Notice of Decision to the employer, and a copy to the employer's attorney or agent, if applicable. The Notice of Decision will notify the employer that it is eligible to seek H–2B workers in the occupational classification for the anticipated number of positions and period of need stated on the approved *H–2B Registration*. The CO may approve the *H–2B Registration* for a period of up to 3 consecutive years.

(2) Denied *H–2B Registration*. If the *H–2B Registration* is denied, the CO will send a Notice of Decision to the employer, and a copy to the employer's attorney or agent, if applicable. The Notice of Decision will:

(i) State the reason(s) why the *H–2B Registration* is denied;

(ii) Offer the employer an opportunity to request administrative review under § 655.61 within 10 business days from the date the Notice of Decision is issued and state that if the employer does not request administrative review within that period the denial is final.

(i) *Retention of documents*. All employers filing an *H–2B Registration* are required to retain any documents and records not otherwise submitted proving compliance with this subpart. Such records and documents must be retained for a period of 3 years from the date of certification of the last *Application for Temporary Employment Certification* supported by the *H–2B Registration*, if approved, or 3 years from the date the decision is issued if the *H–2B Registration* is denied or 3 years from the day the Department receives written notification from the employer withdrawing its pending *H–2B Registration*.

(j) Transition period. In order to allow OFLC to make the necessary changes to its program operations to accommodate the new registration process, OFLC will announce in the FEDERAL REGISTER a separate transition period for the registration process, and until that time, will continue to adjudicate temporary need during the processing of applications.

§ 655.12 Use of registration of H–2B employers.

(a) Upon approval of the *H–2B Registration*, the employer is authorized for the specified period of up to 3 consecutive years from the date the *H–2B Registration* is approved to file an *Application for Temporary Employment Certification*, unless:

(1) The number of workers to be employed has increased by more than 20 percent (or 50 percent for employers requesting fewer than 10 workers) from the initial year;

(2) The dates of need for the job opportunity have changed by more than a total of 30 calendar days from the initial year for the entire period of need;

(3) The nature of the job classification and/or duties has materially changed; or

(4) The temporary nature of the employer's need for services or labor to be performed has materially changed.

(b) If any of the changes in paragraphs (a)(1) through (4) of this section apply, the employer must file a new *H–2B Registration* in accordance with § 655.11.

[77 FR 10153, Feb. 21, 2012]

EFFECTIVE DATE NOTE: At 77 FR 10153, Feb. 21, 2012, § 655.12 was added, effective Apr. 23, 2012.

§ 655.13 Review of PWDs.

(a) *Request for review of PWDs*. Any employer desiring review of a PWD must make a written request for such review to the NPWC Director within 7 business days from the date the PWD is issued. The request for review must clearly identify the PWD for which review is sought; set forth the particular grounds for the request; and include any materials submitted to the NPWC for purposes of securing the PWD.

(b) *NPWC review*. Upon the receipt of the written request for review, the NPWC Director will review the employer's request and accompanying documentation, including any supplementary material submitted by the employer, and after review shall issue a Final Determination letter; that letter may:

(1) Affirm the PWD issued by the NPWC; or

(2) Modify the PWD.

(c) *Request for review by BALCA.* Any employer desiring review of the NPWC Director's decision on a PWD must make a written request for review of the determination by BALCA within 10 business days from the date the Final Determination letter is issued.

(1) The request for BALCA review must be in writing and addressed to the NPWC Director who made the final determinations. Upon receipt of a request for BALCA review, the NPWC will prepare an appeal file and submit it to BALCA.

(2) The request for review, statements, briefs, and other submissions of the parties must contain only legal arguments and may refer to only the evidence that was within the record upon which the decision on the PWD was based.

(3) BALCA will handle appeals in accordance with § 655.61.

[77 FR 10153, Feb. 21, 2012]

EFFECTIVE DATE NOTE: At 77 FR 10153, Feb. 21, 2012, § 655.13 was added, effective Apr. 23, 2012.

§ 655.14 [Reserved]

APPLICATION FOR TEMPORARY EMPLOYMENT CERTIFICATION FILING PROCEDURES

EFFECTIVE DATE NOTE: At 77 FR 10153, Feb. 21, 2012, an undesignated center heading was added before § 655.15, effective Apr. 23, 2012.

§ 655.15 Required pre-filing recruitment.

(a) *Time of filing of application.* An employer may not file an *Application for Temporary Employment Certification* before all of the pre-filing recruitment steps set forth in this section have been fully satisfied, except where specifically exempted from some or all of those requirements by these regulations or special procedures. Applications submitted not meeting this requirement shall not be accepted for processing.

(b) *General attestation obligation.* An employer must attest on the *Application for Temporary Employment Certification* to having performed all required steps of the recruitment process as specified in this section.

(c) *Retention of documentation.* The employer filing the *Application for Temporary Employment Certification* must maintain documentation of its advertising and recruitment efforts, including prevailing wage determinations, as required in this subpart and be prepared, upon written request, to submit this documentation in response to an RFI from the CO prior to the CO rendering a Final Determination or in the event of a CO-directed audit examination. The documentation required in this section must be retained by the employer for a period of no less than 3 years from the date of the certification.

(d) *Recruitment steps.* An employer filing an application must:

(1) Obtain a prevailing wage determination from the NPC in accordance with procedures in § 655.10;

(2) Submit a job order to the SWA serving the area of intended employment;

(3) Publish two print advertisements (one of which must be on a Sunday, except as provided in paragraph (f)(4) of this section); and

(4) Where the employer is a party to a collective bargaining agreement governing the job classification that is the subject of the H–2B labor certification application, the employer must formally contact the local union that is party to the collective bargaining agreement as a recruitment source for able, willing, qualified, and available U.S. workers.

(e) *Job order.* (1) The employer must place an active job order with the SWA serving the area of intended employment no more than 120 calendar days before the employer's date of need for H–2B workers, identifying it as a job order to be placed in connection with a future application for H–2B workers. Unless otherwise directed by the CO, the SWA must keep the job order open for a period of not less than 10 calendar days. Documentation of this step shall be satisfied by maintaining a copy of the SWA job order downloaded from the SWA Internet job listing site, a copy of the job order provided by the SWA, or other proof of publication from the SWA containing the text of the job order and the start and end dates of posting. If the job opportunity